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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 450

VIOLET TRAPPING COMPANY, INC.,
Petitioner,

versus

TENNESSEE GAS TRANSMISSION COMPANY,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Louisiana

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RESPONDENT'S BRIEF IN OPPOSITION

REFERENCE TO OPINION BELOW

The decision of the Supreme Court of Louisiana recalling and setting aside writs granted previously by said Court is reported at 176 So.2d 425 (1965). Petitioner herein was denied rehearing on July 2, 1965.

STATEMENT AS TO JURISDICTION

Petitioner invokes jurisdiction of this Court under the provisions of 28 U.S.C.A. 1257 (2) and 1257 (3).

Since the present petition is not an appeal, 28 U.S.C.A. 1257 (2) is not applicable.

Respondent questions the jurisdiction of this Court under 28 U.S.C.A. 1257 (3), in that there is no question presented as to the validity of a treaty or statute of the United States or of a state statute on the grounds of its being repugnant to the Constitution, treaties or laws of the United States.

Petitioner has raised no federal question timely and properly in the Court below so as to give this Court jurisdiction to review the judgment on writ of certiorari in the manner provided by Rule 23 of the United States Supreme Court, 28 U.S.C.A., and the decision below was based on an adequate and independent non-federal ground.

Said decision of the Supreme Court of Louisiana is limited to the considerations of the questions made the subject of a writ of certiorari by said Court as follows: (176 So.2d at p. 436)

> "Writs granted with stay order. Consideration of these writs is restricted to the question whether the statutes abolishing suspensive appeals in expropriation cases of this kind are violative of that part of Section 2 of Article 1 of the Constitution providing that 'private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid' and that part of Section 15 of Article 4 providing 'nor shall vested rights be divested unless for public utility, and for just and adequate compensation previously paid.' In this connection, *State v. Phares*, 245 La. 534, 159 So.2d 144."

Under said call there is no federal question presented and all issues which may be had in conjunction with the instant litigation may be determined by a devolutive appeal which is in progress at present.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following Articles of the Louisiana Constitution of 1921 and State statutes are involved in this case:

LSA-Constitution Article I, Section 2:

"*Due process; expropriation of private property for public purposes; just compensation*

"Section 2. No person shall be deprived of life, liberty or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid."

LSA-Constitution Article IV, Section 15:

"*Ex-post factor laws; impairment of contracts; vested rights; just compensation*

"Section 15. No ex-post facto law, nor any law impairing the obligation of contracts, shall be passed; nor shall vested rights be divested, unless for purposes of public utility, and for just and adequate compensation previously paid."

LSA-Civil Code Article 2634:

"*Appeal; payment of award to owner or deposit in court as entitling plaintiff to property*

"Art. 2634. No party to any expropriation proceeding shall be entitled to or granted a suspensive appeal from any order, judgment, or decree rendered in such proceeding, whether such

order, judgment, or decree is on the merits, exceptions, or special pleas and defenses, or any or all of them. The whole of the judgment, however, shall be subject to the decision of the appellate court on review under a devolutive appeal.

"When a devolutive appeal is taken by either party, payment to the owner of the amount awarded by the trial court, or the deposit thereof in the registry of the court, entitles the plaintiff to the property described in the judgment in the same manner as would a voluntary conveyance. If any change in the amount awarded is made on such appeal, the plaintiff shall pay the additional assessment or recover the surplus paid. (As amended Acts 1954, No. 705, § 1; Acts 1960, No. 92, § 1.)"

LSA-Civil Code Article 2636:

"*Rights of owner when excessive land demanded*

"Art. 2636. If any owner shall be of opinion that the quantity of land sought to be purchased by any corporation exceeds that which is reasonably necessary for the purpose intended by the company, it shall be lawful for him to file a special plea, setting forth this fact, and in such case the court shall determine not only the value of the land to be expropriated, but also the extent of land over which the company may exercise the forced expropriation; the whole always subject to the decision of the court on appeal, which appeal, however, as provided by Article 2634, shall not suspend the execution of the judgment of the lower court. (As amended Acts 1960, No. 93, § 1.)"

LSA-R.S. 19:13:

"Appeal; payment of award to owner or deposit in court as entitling plaintiff to property

"No party to any expropriation proceeding shall be entitled to or granted a suspensive appeal from any order, judgment, or decree rendered in such proceeding, whether such order, judgment, or decree is on the merits, exceptions, or special pleas and defenses, or any or all of them. The whole of the judgment, however, shall be subject to the decision of the appellate court on review under a devolutive appeal.

"When a devolutive appeal is taken by either party, payment to the owner of the amount awarded by the trial court, or the deposit thereof in the registry of the court, entitles the plaintiff to the property described in the judgment in the same manner as would a voluntary conveyance. If any change in the amount awarded is made on such appeal, the plaintiff shall pay the additional assessment or recover the surplus paid. As amended Acts 1954, No. 706, § 1; Acts 1960, No. 108, § 1."

QUESTION PRESENTED FOR REVIEW

Is a determination by the Supreme Court of Louisiana of the constitutionality under the Constitution of the State of Louisiana of statutes duly enacted by the Legislature of Louisiana relating to appeals in expropriation cases repugnant in any way to the provisions of the United States Constitution or contrary to the decisions of the Supreme Court of the United States when the Supreme Court of the State of Louisiana held as follows: "Writs refused. The application is denied. There is no constitutional guarantee of a suspensive

appeal, and the act of the legislature in limiting suspensive appeals in expropriation cases to devolutive appeals is not unconstitutional". (176 So.2d 425, at p. 447)

STATEMENT OF THE CASE

In order to correct certain inaccuracies contained in the Statement of the Case made by petitioner herein, respondent avails itself of the provisions of Rule 40(3) of the United States Supreme Court, 28 U.S.C.A., as follows: Tennessee Gas Transmission Company filed expropriation proceedings against Violet Trapping Company, Inc. in the Louisiana State Court. After proper petition, service of citation and notice of hearing and a trial on the merits in a duly constituted district court, plaintiff deposited the amount of just compensation found by the Court, all in accordance with Louisiana law. The Fourth Circuit Court of Appeal, in conformity with decisions of two other courts of appeal of Louisiana, denied a writ of certiorari to defendant.

Defendant applied for a writ of certiorari to the Supreme Court of Louisiana. After a hearing and rehearing, that Court rendered judgment recalling its writ and held in the manner set out *verbatim* hereinabove.

Further, the hearing in the Supreme Court of Louisiana was limited in scope as set out hereinabove. Defendant, petitioner herein, did not raise a federal question timely and properly below, and does not present herein any federal question which has not been decided previously by this Court.

There are no facts for consideration by this Court in that there has been no final determination of this case on its merits, and petitioner presently is furthering a devolutive appeal under proper procedure of the State of Louisiana.

On said devolutive appeal, petitioner herein will be given full opportunity to further all factual issues which it urged improvidently in its application herein.

ARGUMENT

The matter presented in petitioner's application for writ of certiorari to the Supreme Court of Louisiana constitutes an attempt on the part of petitioner herein to have this Court review a decision of the court of last resort of Louisiana wherein said court interpreted statutes enacted by the Legislature of the State of Louisiana in light of the above-quoted provisions of the Louisiana Constitution. It is respondent's position that the above statement, which is adequately substantiated by the record before this Court, is a complete answer to applicant's contention that a federal question is presented to the Court.

There simply is no federal question before this Court.

There is no basis for a writ herein under *Williams v. Kaiser*, 323 U.S. 471, 65 S.Ct. 363, 89 L.Ed. 398 (1945).

Clearly, as held in *Williams*, this Court will not grant a writ unless it can be shown that the State Court's decision was based on a federal question and

that the interpretation of the federal question was necessary to the determination of the cause.

It is clear, also, that the decision of the Court below was on state grounds, that is, the provisions of LSA-R.S. 19:13, as amended by Act 108 of 1960, and Articles 2634 and 2636 of the Louisiana Civil Code, which grant to defendants in expropriation cases a right of devolutive appeal, but deny to defendants a suspensive appeal from an award of a district court, constitute the valid and lawful exercise of legislative prerogative. This is so because suspensive appeal is not guaranteed by the Constitution of Louisiana. The constitutional test is met in expropriation cases where a judgment by a court of competent jurisdiction is predicated on proper citation, service of process, notice and trial, after which the amount of just compensation is deposited for the account of defendant with the Clerk of Court.

This decision does in fact bring the law of Louisiana and the jurisprudence of Louisiana in consonance with the decisions of this Court and the decisions of each of the forty-nine other states who have passed on the issue. In *Dohany v. Rogers*, 281 U.S. 362, 50 S.Ct. 299, 74 L.Ed. 904 (1930), this Court set at rest the proposition that the due process clause " . . . does not guarantee to the citizen of a state any particular form or method of state procedure. Under it he may neither claim a right to trial by jury nor a right of appeal. Its requirements are satisfied if he has reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the

rights which may be affected by it." (281 U.S. at p. 369)

In *Cherokee Nation v. Southern Kansas Railroad Company*, 135 U.S. 641, 10 S.Ct. 965, 34 L.Ed. 295 (1890), this Court held that a statute which permits entry of the property by a condemning authority pending a final determination of the issue of just compensation and damages on appeal meets the constitutional test, provided, as in this case, there has been a hearing in a court of competent jurisdiction based on a proper notice of hearing, a trial, and a deposit of just compensation as found by the trial court.

In the instant case, the Supreme Court of Louisiana held as follows:

> "Suffice it to say that in no state of this Union do we find that a land owner is allowed a suspensive appeal and the appropriating authority prohibited from entry on or possession of the expropriated property pending such appeal to the appellate courts in cases in which the power of *Eminent Domain* is being exercised in the interest of a public purpose or good."
>
> (176 So.2d 425, at p. 444; emphasis by the Court)

To hold otherwise, would be virtually to destroy the right of expropriation by permitting the strategy of delay on the part of land owners to force public bodies to pay exorbitant prices or to delay public works for years while litigation is pursued to final determination. The Supreme Court of Louisiana clearly exercised its judicial function in upholding the constitutionality of

the instant Louisiana statute under the Constitution of Louisiana and its holding is in no way repugnant to the provisions of the Constitution of the United States.

CONCLUSION

There is no federal question presented herein and the case has been decided below on adequate and independent non-federal grounds.

The decision below is in complete harmony with the law and the jurisprudence of this Court in holding that there is no constitutional guarantee of a suspensive appeal under the Constitution of Louisiana, and that the act of the Legislature of Louisiana in limiting appeals in expropriation cases to devolutive appeal is not unconstitutional.

Respectfully submitted,

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CERTIFICATE

I, the undersigned attorney of the Bar of the Supreme Court of the United States, certify that the above and foregoing Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Louisiana was served upon the attorney for petitioner herein on this date, by depositing same in the United States mail, at New Orleans, Louisiana, with First Class postage prepaid, addressed to counsel of record at his post office address as follows: Mr. John W. Bryan, Jr., 1110 National Bank of Commerce Building, New Orleans, Louisiana, 70112.

New Orleans, Louisiana, September 7th, 1965.

ERNEST A. CARRERE, JR.